Circuit Court for Cecil County
Case No. 07-D-08-000723

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2484

September Term, 2016

WESLEY G. WARNICK

v.

DOREEN MARY WARNICK, a/k/a
DOREEN MARY URIE

Meredith,
Arthur,
Reed,

JJ.

Opinion by Arthur, J.

Filed: June 5, 2018

Under the Employee Retirement Income Security Act of 1974, the beneficiary of a pension plan generally cannot assign his or her pension rights to a third party. *See, e.g.*, *Rohrbeck v. Rohrbeck*, 318 Md. 28, 30-31 (1989) (citing 29 U.S.C. § 1056(d)(1); 26 U.S.C. § 401(a)(13)). One exception involves the assignment of pension benefits as part of the division of marital property following divorce proceedings. *See id.* at 32-35.

To effectuate the division of marital rights in pension benefits, the Retirement Equity Act of 1984 requires a state court to enter a qualified domestic relations order or "QDRO." *See id.* at 32-34 (citing 29 U.S.C. § 1056(d); 26 U.S.C. §§ 401, 414). A QDRO permits a pension administrator to distribute funds as set forth in the order, assuring that the beneficiary's spouse receives pension benefits as an alternate payee. *See id.* at 35-36.

A QDRO may be an integral part of a final judgment in a divorce proceeding, or it may be "collateral" to the final judgment. *Id.* at 42-43; *Potts v. Potts*, 142 Md. App. 448, 459 (2002). If a court intends the QDRO to be integral to the final judgment, then no part of the judgment is appealable until the court has actually entered the QDRO. *See, e.g.*, *Jenkins v. Jenkins*, 112 Md. App. 390, 402 (1996). If, by contrast, the QDRO is "collateral" to the final judgment, the judgment of divorce is final and appealable before the court has actually entered the QDRO. *See, e.g.*, *Potts v. Potts*, 142 Md. App. at 461-62.

In addition, if the court intends the QDRO to be "collateral" to the final judgment, the judgment becomes enrolled on the thirty-first day after it is entered on the docket.

See Md. Rule 2-535; Md. Code (1974, 2013 Repl. Vol.), § 6-408 of the Courts and Judicial Proceedings Article. Thereafter, a court may revise the judgment only upon a showing of fraud, mistake, or irregularity. Md. Rule 2-535(b). The court's revisory power over the enrolled judgment is limited to cases of fraud, mistake, or irregularity even if it has not yet entered the "collateral" QDRO.

This case principally concerns whether the Circuit Court for Cecil County intended a QDRO to be integral or "collateral" to a judgment of absolute divorce. We shall hold that in this case the QDRO was intended to be "collateral" to the judgment. We shall further hold that, even though the court has yet to enter a QDRO, the judgment of absolute divorce became enrolled and may be revised only upon a showing of fraud, mistake, or irregularity, because far more than 30 days have passed since the entry of the judgment.

PROCEDURAL BACKGROUND

On July 7, 2008, Wesley Warnick filed a complaint for limited divorce from his wife Doreen Warnick, who is now known as Doreen Urie.

Following court-ordered mediation, Warnick and Urie reached an agreement on all issues. The agreement was memorialized in a consent order that was filed on January 16, 2009. As part of the agreement, Urie would receive the marital portion of Warnick's pension. In addition, Urie would check to see whether a life insurance policy on Warnick's life could be transferred to him, so that he could assume the premium

payments. The consent order did not refer to the survivor benefits under Warnick's pension.

On June 5, 2009, Warnick told the court that the only issue remaining between the parties was money owed by him to Urie, to compensate her for her interest in the marital home. The consent order envisioned that Warnick would pay Urie for her interest and that she would convey her interest in the home to him.

On August 14, 2009, the clerk docketed a document titled "Judgment of Absolute Divorce." The document was printed on the stationery of the attorney who represented Warnick at that time; it was signed both by Warnick's attorney and by Urie's attorney; and both attorneys certified that they had read the document and approved it as to form and content.

In its first paragraph, the "judgment of absolute divorce" ended the parties' marriage. In the second paragraph, the judgment incorporated the parties' consent order, but did not merge it into the judgment. In the third paragraph, the judgment envisioned the entry of a QDRO:

> [T]his Court shall retain jurisdiction to pass the QDRO, modify such QDRO or modify this Judgment of Absolute Divorce, for the purpose of maintaining the qualification as a qualified domestic relations order under the Retirement Equity Act of 1984, or any other or subsequent legislation; and both parties and the manager of [Warnick's] retirement plan shall take whatever actions are necessary to establish or maintain these qualifications, provided that no such amendment shall require the retirement plan to provide any type or form of benefits, or any option not otherwise provided under the plan, and further provided that no such amendment or right of the Court to so amend will invalidate the order as "Qualified" under the Retirement Equity Act[.]

The fourth paragraph required Urie to submit a QDRO that would address Warnick's retirement benefits under his employer's pension plan. The fifth paragraph required Warnick to "cooperate in the drafting of the QDRO," so that it could be "submitted for approval by the plan administrator" within 30 days of the entry of the judgment.

The sixth paragraph dictated the substance of the QDRO:

> [Urie's] interest in [Warnick's] aforesaid retirement benefit is hereby defined as fifty percent (50%) of the "marital share" of the retirement benefit, the marital share being that fraction of the benefit whose numerator shall be the number of months of the parties' marriage during which benefits were accumulated, and whose denominator shall be the total number of months during which the benefits were accumulated prior to the time when the payment of such benefits shall commence. [Urie] shall receive fifty percent (50%) of the aforesaid marital share of any payments made from the retirement benefits of [Warnick], if, as, and when the payments are made. [Urie] shall only receive the above if she is still living at the commencement of payments. If [Urie] is deceased at the time of the commencement of payments, [Urie's] interest shall revert to [Warnick]. *[Urie] shall be entitled to death and survivor benefits, if available, and [Warnick] shall pay, out of her share of [Warnick's] retirement benefits, any expense therefore* [sic] [.]

(Emphasis added.)

Notably, this paragraph entitled Urie to survivor benefits even though the consent order was silent on that issue.

In the next three paragraphs, the parties waived any rights in each other's property, waived the right to a monetary award, and waived any right to alimony. In the next two paragraphs, the court empowered Urie to use her former name (rather than Warnick's name) and dismissed her counterclaim for divorce. In the next paragraph, the court

ordered Warnick to pay costs. In the next and final paragraph, the court stated that it would retain jurisdiction for 90 days over issues pertaining to marital property, in particular, the payment for Urie's interest in the marital home.

In summary, the judgment addressed every aspect of the contested divorce proceeding – the parties' status, their rights in marital property (including pension rights), the monetary award, alimony, etc. The judgment did not include a QDRO, but it dictated the terms that the QDRO would contain (including terms concerning Urie's right to survivor benefits); it ordered Urie to submit a QDRO; and it required Warnick to cooperate in the drafting of the QDRO. The judgment did not mention Urie's insurance policy on Warnick's life.

Neither party moved to alter or amend the judgment within 10 days, asked the court to exercise its broad revisory power over the judgment within 30 days, or noted an appeal. These omissions are unsurprising, given that both of the attorneys signed the judgment and represented that they approved its form and content.

For reasons that are not clear from the record, the parties did not submit a QDRO to the court for more than six years.

Eventually, on September 30, 2015, Warnick, through new counsel, filed what he called a "Motion to Enforce the Entry of a QDRO and Other Relief." In that motion, however, Warnick did not ask the court to enter a QDRO that contained the terms dictated in the judgment of absolute divorce. To the contrary, even though the judgment of absolute divorce entitled Urie to death and survivor benefits, Warnick's motion

requested that the court enter a QDRO that did *not* provide a survivor annuity for Urie. In addition, even though the judgment of absolute divorce said nothing about life insurance, Warnick's motion requested that the court order Urie to assign the policy on his life to him.

Urie opposed Warnick's "motion to enforce" by filing what she called a "motion to dismiss" his motion. In response, Warnick amended his "motion to enforce," purported to incorporate a complaint for declaratory relief into the amended motion, and propounded discovery requests to Urie's former attorney. Urie opposed the amended motion by filing another so-called "motion to dismiss."

Because Urie had not simply opposed Warnick's amended motion, but had filed a "motion to dismiss" it, he was arguably entitled to have 15 days to respond. The court, however, apparently did not appreciate the procedural difficulty that Urie had introduced when she moved to "dismiss" Warnick's motion: perhaps perceiving that the "motion to dismiss" was, in substance, a response in opposition to Warnick's amended motion, the court proceeded to "dismiss" (i.e., to deny) his request for relief.

Warnick appealed. He contended that the court had jumped the gun by granting Urie's "motion to dismiss" before he had time to respond.

In mediation in this Court, the parties reached an agreement, which was memorialized in a consent order on September 23, 2016. The order remanded the case to the circuit court with orders to vacate the "dismissal" and to allow Warnick an opportunity to respond to Urie's "motion to dismiss."

After the case returned to the circuit court, Warnick amended his amended "motion to enforce," and Urie filed an "answer" to the motion. On January 12, 2017, the court conducted a hearing on the issues surrounding Warnick's "motion to enforce," as well as his motion for sanctions relating to an alleged failure of discovery on the part of Urie's ex-attorney.

In a memorandum opinion and order dated January 13, 2017, the court "dismissed" Warnick's second amended "motion to enforce." The court reasoned that the 2009 judgment of absolute divorce was a final judgment, notwithstanding that the court had retained jurisdiction for the purpose of entering a QDRO. If Warnick had wanted the court exercise its broad revisory power over that judgment to delete the reference to survivor benefits or to include an obligation to assign a life insurance policy, the court reasoned, he was required to act within 30 days of the date when it was entered on the docket. *See* Md. Rule 2-535(a). Accordingly, the court concluded that Warnick had waived any right to complain about the contents of the judgment.

In addition to "dismissing" Warnick's "motion to enforce," the court dismissed his request for declaratory relief, reasoning that there was no actual controversy as to the terms of the QDRO. The court also dismissed Warnick's claim for discovery sanctions, terming it moot because Urie had given him everything to which he was entitled. Finally, the court found that Warnick had proceeded without substantial justification in violation of Rule 1-341 and directed Urie to submit a petition for fees and costs. The court did not, however, award fees and costs in any amount.

Warnick noted this appeal.

QUESTIONS PRESENTED

In violation of Rule 8-504(a)(3), Warnick's brief does not contain "[a] statement of the questions presented, separately numbered, indicating the legal propositions involved[.]" Instead, Warnick blows past the requirement of enumerating the questions presented, proceeding directly to a rambling list of no fewer than nine points of argument, which we have included in an appendix to this opinion.

Although we have discretion to dismiss the appeal because of the violation (Md. Rule 8-504(c)), Urie does not complain about Warnick's failure to enumerate the questions presented. Nor does she appear to have suffered any significant prejudice, as she succeeded in responding to Warnick's various arguments despite the absence of a formal set of questions presented. Consequently, we shall not dismiss the appeal, but shall reformulate Warnick's arguments into the following list of questions:

1. Did the trial court err in determining that the judgment of absolute divorce was a final judgment and that the QDRO was collateral to it?
2. Did the trial court err in determining that declaratory relief was inappropriate?
3. Did the trial court err in entertaining Urie's motion to "dismiss"?
4. Did the trial court err in concluding that a discovery dispute was moot?
5. Did the trial court abuse its discretion by agreeing to award Urie costs and attorneys' fees?

We see no error or abuse of discretion. Accordingly, we affirm.

DISCUSSION

A. Finality

The central question in this appeal is whether the court intended the 2009 "judgment of absolute divorce" to be a final judgment even though the parties had not yet submitted a QDRO, or whether the "judgment of absolute divorce" would become final only when the court had signed a QDRO.

If the court envisioned that the 2009 judgment would become final only after it had signed a QDRO, then the "judgment" was just an interlocutory order (*see Rohrbeck v. Rohrbeck*, 318 Md. at 43-44), which the court could revise at any time. *Hanna v. Quartertime Video & Vending Corp*, 321 Md. 59, 65 (1990) (1989). In that event, the court could have entertained Warnick's request for relief.[1]

On the other hand, if the court intended the QDRO to be "collateral" to the judgment, so that the judgment would be final even before the court signed a QDRO, the court had broad powers to revise the judgment only for the first 30 days after it was entered on the docket. *See* Md. Rule 2-535(a). Thereafter, the court could revise the judgment only if Warnick showed fraud, mistake, or irregularity (*see* Md. Rule 2-535(b)), which he has made no effort to do. If, therefore, the court intended the QDRO to be "collateral" to the 2009 judgment, it acted correctly in refusing to entertain Warnick's effort at revision.

[1] The court, however, would not have been required to grant the requested relief, as long as it exercised its discretion in evaluating the request. *See Stuples v. Balt. City Police Dep't*, 119 Md. App. 221, 232 (1998).

"[A] ruling must ordinarily have the following three attributes to be a final judgment: (1) it must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court acts pursuant to Maryland Rule 2-602(b) to direct the entry of a final judgment as to less than all of the claims or all of the parties, it must adjudicate or complete the adjudication of all claims against all parties; [and] (3) it must be set forth and recorded in accordance with Rule 2-601." *Metro Maint. Sys. South, Inc. v. Milburn*, 442 Md. 289, 298 (2015) (citing *Rohrbeck v. Rohrbeck*, 318 Md. at 41); *Md. Bd. of Physicians v. Geier*, 225 Md. App. 114, 129-30 (2015).

"To have the attribute of finality, the ruling must be so final as either to determine *and conclude* the rights involved or to deny the appellant the means of further prosecuting or defending his or her rights and interests in the subject matter of the proceeding." *Rohrbeck v. Rohrbeck*, 318 Md. at 41 (emphasis in original) (citations omitted). "To be final and conclusive in that sense, the ruling must necessarily be unqualified and complete, except as to something that would be regarded as collateral to the proceeding." *Id.*

A QDRO may be integral to a judgment, or it may be collateral to a judgment. *See id.* at 42-43; *Potts v. Potts*, 142 Md. App. at 459. It is not essential that a QDRO be part of the judgment in a divorce action. *Rohrbeck v. Rohrbeck*, 318 Md. at 42. "Federal law does not require that a QDRO be part of the actual judgment in the case." *Id.*; *accord Potts v. Potts*, 142 Md. App. at 458 ("'ERISA does not necessarily require that a QDRO

be part of the actual judgment in a case'") (quoting *Hogle v. Hogle*, 732 N.E.2d 1278, 1281 (Ind. Ct. App. 2000)).

Not only is it unnecessary for a QDRO to be part of the judgment, but it may be undesirable as well. "Plan administrators are presumably not interested in receiving multi-faceted divorce decrees specifying such matters as custody, visitation, support, and the like." *Rohrbeck v. Rohrbeck*, 318 Md. at 42. "Their only interest is in those matters set forth" in the relevant federal statutes. *Id.* Because it is easier for a plan administrator to review an order that does not contain provisions relating to matters other than pension rights, a QDRO is often drafted after the judgment of absolute divorce. *Potts v. Potts*, 142 Md. App. at 458. Furthermore, because employees may not want to disclose the details of a divorce settlement to their employers, they may prefer to submit the information concerning pension rights in a separate order drafted after the divorce becomes final. *Id.*

"Sometimes the delay in drafting the QDRO is simply the desire to postpone dealing with additional issues that may jeopardize an already fragile resolution of issues arising from the dissolution of the marriage." *Id.* Additionally, if the pension is not yet in "pay status" – if the beneficiary-spouse is not yet drawing the pension – there may be little motivation or incentive to prepare a QDRO.

In this case, it is beyond any serious dispute that the court intended the 2009 "judgment of absolute divorce" to be final even though it had not yet signed the QDRO and that the QDRO was to be "collateral" to a final judgment. The "judgment of absolute

divorce" addresses every disputed issue pertaining to the divorce, including the specific terms that the QDRO itself must contain. The court expressly retained jurisdiction to enter the QDRO, which it would be unnecessary to do if the judgment was anything other than final. The court could not have envisioned that the rest of its comprehensive order would remain in abeyance until some future date when the parties agreed upon the terms of a QDRO and submitted it for approval. The court certainly could not have envisioned that, until it signed a QDRO, the parties could reassert the right to alimony or to a monetary award that they had waived in the judgment, or that they could assert some challenge to the division of marital property to which they had agreed in the consent judgment.[2]

In short, the QDRO was unquestionably intended to be "collateral" to the 2009 judgment. The "judgment of absolute divorce," therefore, was final and appealable when the clerk entered it on the docket on August 14, 2009. If Warnick had wanted the court to exercise its broad power to revise the judgment on the ground that it erroneously awarded survivor benefits to Urie or erroneously failed to require her to assign the life insurance policy on his life to him, he was required to act within 30 days. *See* Md. Rule 2-535(a).

[2] Under Md. Code (1984, 2014 Repl. Vol.), § 8-213(b) of the Family Law Article, the decree of divorce itself was final even if the court reserved marital property issues for later determination. *See Parker v. Robins*, 68 Md. App. 597, 601-02 (1986); *see also Davis v. Davis*, 97 Md. App. 1, 16-18 (1993), *aff'd*, 335 Md. 699 (1994). Hence, even if the judgment would not become final in the conventional sense until the court signed a QDRO, it still had the effect of ending the parties' marriage, permitting them to remarry (without becoming bigamists), terminating their right to elect against the other's will, and abolishing any rights under the laws of intestate succession.

He failed to do so. Consequently, he can ask the court to revise the judgment only if he shows fraud, mistake, or irregularity (Md. Rule 2-535(b)), which he made no attempt to do. Under these circumstances, the circuit court correctly rebuffed Warnick's challenge to the judgment. *See, e.g.*, *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475 (1997).[3]

In advocating a contrary conclusion, Warnick relies primarily on *Rohrbeck v. Rohrbeck*. In that case, however, the circuit court had established that the judgment of divorce would not be final until it had signed a QDRO. "Throughout her remarks" in *Rorhbeck*, the trial judge "made clear that the 'judgment' she was purporting to enter would not be final and complete until the individual QDRO's were signed." *Rohrbeck v. Rohrbeck*, 318 Md. at 43. In this case, by contrast, the trial judge made no such remarks. To the contrary, it is plain, from her written "judgment of absolute divorce," that she had determined and concluded the rights of the parties, including the contents of the QDRO, and that the execution of the QDRO was a purely collateral matter that did not deprive the judgment of finality.[4]

[3] If Warnick were correct that the judgment did not become final until the court actually entered the QDRO, his appeal would be premature, because it would be from a mere interlocutory order that did not conclude and dispose of all noncollateral issues in the case. Warnick has the right to pursue this appeal only because the order denying his motion to enforce has determined and concluded all issues pertaining to that *post-judgment* motion. *See Davis v. Attorney General*, 187 Md. App. 110, 122 (2009) (stating that "[t]he denial of a motion to vacate an enrolled judgment is a final order, subject to appeal, as there is nothing left to be done in the circuit court").

[4] Although *Rohrbeck* has long been an important case in the area of final judgments, including the finality of divorce judgments, the 1989 decision is obsolete in

In summary, the judgment of absolute divorce in this case became final when the clerk docketed that document on August 14, 2009. Warnick did not ask the court to revise any alleged defects in the document in the 30 days after it was entered on the document. Therefore, absent a showing of fraud, mistake, or irregularity, which he did not attempt to make, it is now too late for the court to revise the judgment. The court correctly rejected his request to do so.[5]

B. Declaratory Judgment

After Warnick filed his initial motion to "enforce" the entry of a QDRO, he purported to amend the motion to include what he called a "complaint" for a declaratory judgment. In brief, Warnick requested a declaration that Urie was not entitled to a survivor annuity and that he was entitled to the transfer of her life insurance policy. In other words, the requested declaration duplicated the changes that Warnick had asked the court to make to the consent judgment of absolute divorce from 2009.

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one respect that bears mentioning in this case. *Rohrbeck* was decided in an era in which a judgment could become final even if it was not memorialized in writing. In *Rohrbeck*, however, a docket entry expressly envisioned that the Court's ruling *would* be memorialized in a written order that included a QDRO. *Rohrbeck v. Rohrbeck*, 318 Md. at 43. For that reason, the Court of Appeals concluded that the ruling would not become final until the circuit court signed such a written order. *See id.* The specific problem in *Rohrbeck* would not arise today, because since October 1, 1997, Md. Rule 2-601(a) has required that each judgment be set forth on a separate document.

[5] After the court signs a QDRO, either party may take another appeal (*see Potts v. Potts*, 142 Md. App. at 461-62), but that appeal would ordinarily be limited to whether the QDRO conformed with the dictates of the judgment of absolute divorce.

The circuit court dismissed the request for declaratory relief on the ground that there was no actual controversy between contending parties, a precondition for a declaratory judgment under § 3-409(a) of the Courts and Judicial Proceedings Article. It reasoned that the 2009 judgment settled the terms of the divorce and that Warnick should have filed a post-judgment revisory motion under Rule 2-535 if he had wished to challenge the terms. This was certainly one of many appropriate grounds to dispose of Warnick's request for relief.[6]

Although "'dismissal is rarely appropriate in a declaratory judgment action[,]'" (*Hanover Invs., Inc. v. Volkman*, 455 Md. 1, 17 (2017) (quoting *Christ ex rel. Christ v. Md. Dep't of Nat. Res.*, 335 Md. 427, 435 (1994))), a court may dispose of a declaratory judgment action without declaring the parties' rights when there is no justiciable controversy. *Broadwater v. State*, 303 Md. 461, 467 (1985) (collecting authorities). "[W]hen a declaratory judgment action is brought and the controversy is not appropriate for resolution by declaratory judgment, the trial court is neither compelled, nor expected, to enter a declaratory judgment." *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 477 (2004).

[6] It is highly irregular for a party to embed a new complaint inside a motion, particularly after the court has already adjudicated the issues raised in the party's initial complaint. Still, no one appears to have questioned how Warnick could file a "complaint" as part of a motion, or how he could file a new complaint after the court had entered what purported to be a "judgment" of absolute divorce in response to his initial complaint, or how he could request a declaratory judgment after the court had already entered a "judgment."

"Once a controversy has been finally adjudicated by a court with jurisdiction of the subject matter and the parties, the controversy is no longer alive and therefore is not the proper subject for a declaratory judgment action[.]" *Fertitta v. Brown*, 252 Md. 594, 599 (1969). "[I]t is generally held that judgments and decrees speak for themselves and declaratory proceedings are not available either to construe, clarify or modify them." *Id.* "Declaratory proceedings were not intended to and should not serve as a substitute for appellate review or as a belated appeal." *Id.* at 599-600.

Warnick never had the right to use a request for declaratory relief as a means to circumvent his failure to appeal from the judgment of absolute divorce or to file a timely revisory motion under Rule 2-535. *Id.* at 599-600. Furthermore, once the circuit court (correctly) concluded that the 2009 judgment was a final judgment, Warnick had no right to a declaratory judgment concerning what the earlier judgment said or should say. *Id.* at 599. In these circumstances, the court was clearly correct in dismissing the request for declaratory relief.

C. Motion to Dismiss

Warnick contends that the circuit court erred in granting Urie's "motion to dismiss" his motion, amended motion, and second amended motion to "enforce" the QDRO. He argues that when Urie responded to his second amended motion, she captioned her response as a "response," and not as a "motion to dismiss." On the basis of that premise, Warnick appears to conclude that the court could not "dismiss" his second amended motion.

Separately, Warnick contends that the court considered factual allegations outside of the complaint in granting a "motion to dismiss" his motion. Thus, in his view, Urie's "motion to dismiss" his motion became a motion for summary judgment, which the court followed the wrong procedure in deciding. Warnick argues that because he filed an affidavit as part of his "answer" to Urie's "motion to dismiss," he created a dispute of material fact, thereby making the grant of dismissal erroneous.

Both parties are laboring under a procedural misconception: under the Maryland Rules, a party may move to dismiss a complaint, counterclaim, third-party complaint, or other pleading, but a party does not move to "dismiss" a motion. Instead, a party responds to a motion. *See* Md. Rule 2-311(b).

Urie responded to each iteration of Warnick's motion. She incorrectly captioned the first and second responses as a "motion to dismiss" Warnick's motion, but the error was immaterial, not least because the court did not grant the requested relief. She correctly captioned the third response as a response, and the court gave her what she wanted by rejecting Warnick's motion to reformulate the contents of the QDRO. Although the court characterized its ruling as the "dismissal" of Warnick's motion, that error, too, was immaterial, because the ruling was tantamount to a denial of the requested relief.

D. Discovery

While his motion and amended motion to "enforce" the QDRO were pending in the circuit court, Warnick propounded interrogatories and document requests to Urie's

former attorney. When Urie either failed to respond or failed to respond to Warnick's satisfaction, he moved for discovery sanctions, including a default judgment. Because Urie eventually produced everything that Warnick had requested, the court concluded that the motion was moot.

In the discovery requests, Warnick attempted to ascertain how his former attorney had come to prepare and sign the document that became the judgment of absolute divorce. It is unclear why Warnick needed to obtain that information from Urie's former attorney rather than from his own former counsel. It is also unclear how that information would tend to prove that the judgment of absolute divorce was less than a final judgment (as opposed to a final judgment to which Warnick's former counsel might have erroneously agreed). It is equally unclear why Warnick would have the unilateral right to reinitiate discovery after the court had entered a judgment of absolute divorce in response to the complaint that he had filed. Discovery is not intended to provide a dissatisfied party with an opportunity to conduct a postmortem of his or her lawsuit.

In any event, "ruling on discovery disputes, determining whether sanctions should be imposed, and if so, determining what sanction is appropriate, involve a very broad discretion that is to be exercised by the trial courts." *North River Ins. Co. v. Mayor and City Council of Baltimore*, 343 Md. 34, 47 (1996). "When reviewing the circuit court's refusal to impose sanctions for discovery abuse, we review the circuit court's decision under an abuse of discretion standard." *Bord v. Baltimore County*, 220 Md. App. 529, 569 (2014).

A trial court abuses its discretion when its ruling is "'clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result,' when the ruling is 'violative of fact and logic,' or when it constitutes an 'untenable judicial act that defies reason and works an injustice.'" *King v. State*, 407 Md. 682, 697 (2009) (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994)). To amount to an abuse of discretion, "'[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Id.* (quoting *North v. North*, 102 Md. App. at 14).

Warnick has no colorable basis to argue that the court abused its discretion in denying his motion for discovery sanctions on grounds of mootness. Because the court had entered a final judgment of absolute divorce seven years earlier, Warnick was not entitled to any discovery at all. He certainly was not entitled to obtain discovery directly from Urie's former attorney, who was not a party to the action.[7] Whatever he got was far more than he had any right to receive. There was no live discovery dispute before the court.

[7] If Warnick had been entitled to conduct discovery – which he was not – he could have propounded interrogatories and document requests to Urie, because she was a party. Those discovery requests would have required Urie to produce unprivileged documents and information in the possession of her agents, including her attorneys. Warnick, however, had no right to request answers to interrogatories directly from a non-party, such as Urie's former attorney. *See* Md. Rule 2-421(a) ("[a]ny party may serve written interrogatories directed to any other party"). Warnick could require a non-party to produce documents at a deposition, but only if he served the non-party with a subpoena, which he apparently did not do in this case. *See* Md. Rule 2-412(c) ("[a] non-party deponent may be required to produce documents or other tangible things at the taking of the deposition by a subpoena").

E. Attorneys' Fees

In his final argument, Warnick contends that the circuit court erred when it employed Md. Rule 1-341 to award Urie the costs and reasonable attorneys' fees that she had incurred in defending against his various challenges to the 2009 judgment. Warnick fails to note, however, the court did not actually award costs or fees in any particular amount. Instead, the court permitted Urie to submit a separate petition for fees and costs and stated that it would enter an award upon the submission of the petition. Because Warnick noted his appeal before the court ever entered any actual award, his challenge to this ruling is not properly before us.

Under Maryland law, an award of fees or costs under a statute or rule is considered to be "collateral" to the merits of a civil action. *See, e.g.*, *Blake v. Blake*, 341 Md. 326, 336 (1996); *County Executive of Prince George's County v. Doe*, 300 Md. 445, 451 n.4 (1984); *Johnson v. Wright*, 92 Md. App. 179, 181-82 (1992). The pendency of a "collateral" motion for costs or fees does not deprive the ruling on the merits of its status as a final, appealable judgment. *See, e.g.*, *Johnson v. Wright*, 92 Md. App. at 181-82. Hence, a party may appeal from a ruling on the merits, such as the judgment of absolute divorce in this case, despite the pendency of a "collateral" motion for costs or fees. *See id.* A party, however, may not appeal from the grant of the "collateral" motion for costs or fees until the court has actually awarded costs and fees in some amount: until then, the decision on the "collateral" motion is not final.

"In considering whether a particular court order or ruling constitutes a final, appealable judgment, we have looked to whether the order was 'unqualified,' and whether there was 'any contemplation that a further order [was to] be issued or that anything more [was to] be done.'" *Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. 230, 243 (2010) (quoting *Rohrbeck v. Rohrbeck*, 318 Md. at 41-42) (citations omitted) (alterations in original). With respect to costs and fees, the circuit court's order was plainly not unqualified, nor did it contemplate that no further order would be issued or that nothing more was to be done. The order permitted Urie to submit a petition for fees and costs, and it anticipated that the court would enter an award of fees and costs only after the submission of that petition. Indeed, the court could not enter an award of fees and costs without a "verified statement" containing the detailed information required by Rule 1-341(b) and without giving Warnick an opportunity to respond. *See* Md. Rule 1-341(c). It follows that, until the court awarded fees and costs in some specific amount, Warnick had no right to appeal from the ruling on the Rule 1-341 motion. *See Maryland Nat'l Capital Park & Planning Comm'n v. Crawford*, 59 Md. App. 276, 304 (1984) (holding that notice of appeal filed after court retained jurisdiction to decide collateral issue of fee petition but before court awarded attorney's fees in particular amount did not permit appellants to challenge award of attorney's fees). "Manifestly, no appeal could be taken on an issue which ha[s] yet to be decided." *Id.*

Furthermore, until the court actually decides to award fees and costs in some specific amount, the issue of Urie's entitlement to them remains interlocutory and, hence,

subject to revision. *See Gertz v. Anne Arundel County*, 339 Md. 261, 272-73 (1995); *Quartertime Video & Vending Corp. v. Hanna*, 321 Md. at 65. It is entirely conceivable that the court could change its mind and decide that Urie was entitled to nothing. Warnick has no right to appeal from a purely interlocutory ruling that the court is free to revise, and even rescind.

It is also conceivable that, when the court actually decides to award fees and costs in some specific amount, the likely cost of an appeal might exceed the amount of the fees and costs that the court awards. In that event, Warnick might not wish to pursue an appeal. It makes no sense to allow Warnick to take an interlocutory appeal from an order authorizing an award of fees and costs if he might abandon the appeal once the court actually quantifies the amount of fees and costs to which Urie is entitled.

Finally, if the court awards less than Urie requested, it is conceivable that *she* too might wish to appeal. Until the court enters the award, however, Urie cannot appeal, because she will not yet have been aggrieved by any court ruling. From the standpoint of judicial economy, it makes little sense to permit Warnick to appeal the earlier interlocutory order authorizing an award of fees and costs, but then to permit Urie to take a second, separate appeal of the order that actually awards fees and costs.

For these reasons, Warnick had no right to appeal the interlocutory order that authorized an award of fees and costs under Rule 1-341, pending the submission of additional information by Urie. Because that order was not a final, appealable judgment, Warnick's appeal was premature. If Warnick wishes to challenge the court's ruling under

Rule 1-341, he is required to file a notice of appeal within 30 days of the date when the clerk dockets the order in which the court actually awards a specific sum in fees and costs.[8]

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[8] Warnick's timely appeal from the other, appealable issues in this case did not deprive the circuit court of "fundamental jurisdiction" to adjudicate other matters, *see Pulley v. State*, 287 Md. 406, 417 (1980), such as the amount of fees and costs to which Urie was entitled.

APPENDIX

In his table of contents, Warnick lists the following arguments:

I. THE JUDGMENT OF DIVORCE WAS NOT A FINAL JUDGMENT.

II. THE APPELLEE FAILED TO FILE A MOTION TO DISMISS IN RESPONSE TO APPELLANT'S SECOND MOTION TO ENFORCE THE ENTRY OF A QDRO, OTHER RELIEF AND COMPLAINT FOR DECLARATORY JUDGMENT.

III. THE COURT COMMITTED ERROR WHEN IT DECLINED TO ADDRESS THE DISPUTE OVER DISCOVERY.

IV. THE COURT FAILED TO FOLLOW THE CORRECT PROCEDURE FOR EVALUATING THE APPELLEE'S MOTION TO DISMISS.

V. THE COURT ERRED WHEN IT CONCLUDED THAT THE DECLARATORY JUDGMENT ACT COULD NOT BE UTILIZED IN THIS CASE AND EVEN IF APPELLANT COULD NOT, THE COURT SHOULD HAVE COBSIDERED [sic] APPELLANT'S MOTION FOR ENTRY OF A QDRO.

VI. APPELLANT'S PRIOR COUNSEL HAD NO AUTHORITY TO NEGOTIATE AND AGREE TO DIFFERENT TERMS.

VII. THE UNSPECIFIED SURVIVOR ANNUITY CAN NOT BE ENFORCED BECAUSE THE COURT CAN NOT MAKE A CONTRACT FOR THE PARTIES.

VIII. THE OWNERSHIP OF THE PRIMERICA LIFE INSURANCE POLICY CAN BE TRANSFERRED.

IX. APPELLEE IS NOT ENTITLED TO LEGAL FEES.